

By: Miles

S.B. No. 84

A BILL TO BE ENTITLED

AN ACT

relating to lethal violence protective orders; creating criminal offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 7B, Code of Criminal Procedure, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. LETHAL VIOLENCE PROTECTIVE ORDER

Art. 7B.151. DEFINITIONS. In this subchapter:

(1) "Bodily injury" and "serious bodily injury" have the meanings assigned by Section 1.07, Penal Code.

(2) "Family," "family violence," and "household" have the meanings assigned by Chapter 71, Family Code.

(3) "Firearm" has the meaning assigned by Section 46.01, Penal Code.

Art. 7B.152. APPLICATION FOR LETHAL VIOLENCE PROTECTIVE ORDER. (a) An application for a protective order under this subchapter may be filed by:

(1) a member of the respondent's family or household;
(2) a parent, guardian, or conservator of a person who is:

(A) under 18 years of age; and
(B) a member of the respondent's family or household; or

(3) a prosecuting attorney acting:

1 (A) on behalf of a person described by
2 Subdivision (1) or (2); or

3 (B) at the request of a peace officer.

4 (b) An application must:

5 (1) include:

6 (A) detailed allegations, based on personal
7 knowledge of a person described by Subsection (a)(1) or (2) or of a
8 peace officer, regarding any dangerous behavior or conduct
9 exhibited by the respondent, including any behavior or conduct
10 related to the respondent's use of firearms;

11 (B) information concerning the quantity, type,
12 and location of any firearms the applicant believes to be in the
13 respondent's possession or control, if any;

14 (C) any other relevant facts indicating a need
15 for a protective order under this subchapter; and

16 (D) a statement that the applicant believes the
17 respondent poses an immediate and present danger of causing bodily
18 injury, serious bodily injury, or death to any person, including
19 the respondent, as a result of the respondent's access to firearms;
20 and

21 (2) be signed by the applicant under an oath that, to
22 the knowledge and belief of the applicant, the facts and
23 circumstances contained in the application are true.

24 (c) An application for a protective order under this
25 subchapter may be filed in a district court, juvenile court having
26 the jurisdiction of a district court, statutory county court, or
27 constitutional county court in the county in which the applicant or

1 the respondent resides.

2 Art. 7B.153. CONFIDENTIALITY OF CERTAIN INFORMATION. On
3 receiving an application containing specific health information
4 concerning the respondent, the court shall order the clerk to:

5 (1) strike the information from the public records of
6 the court; and

7 (2) maintain a confidential record of the information
8 for use only by the court.

9 Art. 7B.154. TEMPORARY EX PARTE ORDER. (a) If the court
10 finds from the information contained in an application for a
11 protective order under this subchapter that there is reasonable
12 cause to believe that the respondent poses an immediate and present
13 danger of causing bodily injury, serious bodily injury, or death to
14 any person, including the respondent, as a result of the
15 respondent's access to firearms, the court, without further notice
16 to the respondent and without a hearing, may issue a temporary ex
17 parte order prohibiting the respondent from purchasing, owning,
18 possessing, or controlling a firearm.

19 (b) In a temporary ex parte order, the court may order the
20 respondent to:

21 (1) relinquish, without delay, any firearms owned by
22 or in the actual or constructive possession or control of the
23 respondent to a law enforcement agency for holding in the manner
24 provided by Article 18.192; and

25 (2) if applicable, surrender to the court the
26 respondent's license to carry a handgun issued under Subchapter H,
27 Chapter 411, Government Code.

1 Art. 7B.155. HEARING; ISSUANCE OF PROTECTIVE ORDER. (a)

2 Not later than the 14th day after the later of the date an
3 application is filed or the date a temporary ex parte order is
4 issued, the court shall hold a hearing on the issuance of the
5 protective order.

6 (b) The court shall provide personal notice of the hearing
7 to the respondent.

8 (c) In determining whether to issue a protective order under
9 this article, the court:

10 (1) shall consider:

11 (A) any history of threats or acts of violence by
12 the respondent directed at any person, including the respondent;

13 (B) any history of the respondent using,
14 attempting to use, or threatening to use physical force against
15 another person;

16 (C) any recent violation by the respondent of an
17 order issued:

18 (i) under another provision of Chapter 7B
19 or under Article 17.292;

20 (ii) under Section 6.504 or Chapter 85,
21 Family Code;

22 (iii) under Chapter 83, Family Code, if the
23 temporary ex parte order has been served on the respondent; or

24 (iv) by another jurisdiction as provided by
25 Chapter 88, Family Code;

26 (D) any arrest or conviction of the respondent
27 for:

1 (i) an offense under Section 42.072, Penal
2 Code; or

3 (ii) a misdemeanor offense involving
4 violence, including family violence;

5 (E) any conviction of the respondent for an
6 offense under Section 42.09, 42.091, or 42.092, Penal Code; and

7 (F) evidence related to the respondent's abuse of
8 a controlled substance or alcohol, including evidence of any
9 treatment for and recovery from abusing a controlled substance or
10 alcohol; and

11 (2) may consider any other relevant factor including:

12 (A) any previous violation by the respondent of
13 an order described by Subdivision (1)(C); and

14 (B) evidence regarding the respondent's recent
15 acquisition of firearms, ammunition, or other deadly weapons.

16 (d) At the close of the hearing, if the court finds by clear
17 and convincing evidence that the respondent poses an immediate and
18 present danger of causing bodily injury, serious bodily injury, or
19 death to any person, including the respondent, as a result of the
20 respondent's access to firearms, the court shall issue a protective
21 order that includes a statement of the required finding.

22 (e) If the court does not make the finding described by
23 Subsection (d), the court shall, as applicable, rescind any
24 temporary ex parte order issued under Article 7B.154 and return the
25 respondent's license to carry a handgun.

26 Art. 7B.156. CONTENTS OF PROTECTIVE ORDER. In a protective
27 order issued under Article 7B.155, the court shall:

1 (1) prohibit the person who is subject to the order
2 from purchasing, owning, possessing, or controlling a firearm for
3 the duration of the order;

4 (2) order the person to:

5 (A) relinquish, without delay, any firearms
6 owned by or in the actual or constructive possession or control of
7 the person to a law enforcement agency for holding in the manner
8 provided by Article 18.192; and

9 (B) if applicable, surrender to the court the
10 person's license to carry a handgun issued under Subchapter H,
11 Chapter 411, Government Code; and

12 (3) suspend a license to carry a handgun issued under
13 Subchapter H, Chapter 411, Government Code, that is held by the
14 person.

15 Art. 7B.157. DURATION OF PROTECTIVE ORDER. (a) A
16 protective order issued under Article 7B.155 is effective until the
17 first anniversary of the date the order was issued.

18 (b) The court may renew a protective order issued under
19 Article 7B.155 for a period not to exceed one year after the order's
20 original expiration date. Before renewing the order the court must
21 hold a hearing and provide personal notice of the hearing to the
22 person who is the subject of the order.

23 (c) A person who is the subject of a protective order may
24 file a motion not earlier than the 91st day after the date on which
25 the order was initially issued or renewed, as applicable,
26 requesting that the court review the order and determine whether
27 there is a continuing need for the order. After a hearing on the

1 motion, if the court fails to make the finding that there is no
2 continuing need for the order, the order remains in effect until the
3 date the order expires as provided by this article.

4 (d) At a hearing to renew or rescind a protective order
5 under this article, the court shall consider the factors described
6 by Article 7B.155(c).

7 Art. 7B.158. NOTICE TO DEPARTMENT OF PUBLIC SAFETY. (a)
8 Not later than the 30th day after the date a protective order is
9 issued under Article 7B.155, the clerk of the issuing court shall
10 provide the following to the Department of Public Safety:

11 (1) the complete name, race, and sex of the person who
12 is the subject of the order;

13 (2) any known identifying number of the person,
14 including a social security number, driver's license number, or
15 state identification number;

16 (3) the person's date of birth;

17 (4) if surrendered to the court, the person's license
18 to carry a handgun issued under Subchapter H, Chapter 411,
19 Government Code; and

20 (5) a copy of the order suspending the person's license
21 to carry a handgun under Subchapter H, Chapter 411, Government
22 Code.

23 (b) On receipt of an order suspending a license to carry a
24 handgun, the department shall:

25 (1) record the suspension of the license in the
26 records of the department;

27 (2) report the suspension to local law enforcement

1 agencies, as appropriate; and

2 (3) if the license was not surrendered to the court,
3 demand surrender of the suspended license from the license holder.

4 (c) Not later than the 30th day after the date the
5 protective order expires under Article 7B.157, the clerk of the
6 issuing court shall notify the Department of Public Safety of the
7 expiration.

8 Art. 7B.159. APPLICATION OF OTHER LAW. To the extent
9 applicable, except as otherwise provided by this subchapter, Title
10 4, Family Code, applies to a protective order issued under this
11 subchapter.

12 SECTION 2. Chapter 18, Code of Criminal Procedure, is
13 amended by adding Article 18.192 to read as follows:

14 Art. 18.192. HOLDING AND DISPOSITION OF FIREARM
15 RELINQUISHED UNDER LETHAL VIOLENCE PROTECTIVE ORDER. (a) A law
16 enforcement officer who takes possession of a firearm from a person
17 who is the subject of a lethal violence protective order issued
18 under Subchapter D, Chapter 7B shall immediately provide the person
19 a written copy of the receipt for the firearm and a written notice
20 of the procedure for the return of a firearm under this article.

21 (b) Not later than the seventh day after the date a firearm
22 subject to disposition under this article is received, the law
23 enforcement agency holding the firearm shall notify the court that
24 issued the lethal violence protective order that the person who is
25 the subject of the order has relinquished the firearm.

26 (c) Not later than the 30th day after the date the lethal
27 violence protective order is rescinded or expires, the clerk of the

1 court shall notify the law enforcement agency of the rescission or
2 expiration.

3 (d) Not later than the 30th day after the date the law
4 enforcement agency holding a firearm subject to disposition under
5 this article receives the notice described by Subsection (c), the
6 law enforcement agency shall conduct a check of state and national
7 criminal history record information to verify whether the person
8 may lawfully possess a firearm under 18 U.S.C. Section 922(g) and
9 under the law of this state.

10 (e) If the check conducted under Subsection (d) verifies
11 that the person may lawfully possess a firearm, the law enforcement
12 agency shall provide to the person by certified mail written notice
13 stating that the firearm may be returned to the person if the person
14 submits a written request before the 121st day after the date of the
15 notice.

16 (f) An unclaimed firearm that is received under a lethal
17 violence protective order issued under Subchapter D, Chapter 7B may
18 not be destroyed or forfeited to the state.

19 (g) The law enforcement agency holding the firearm may
20 provide for the firearm to be sold by a person who is a licensed
21 firearms dealer under 18 U.S.C. Section 923 if:

22 (1) the check conducted under Subsection (d) shows
23 that the person may not lawfully possess a firearm; or

24 (2) the notice is provided under Subsection (e) and
25 the person does not submit, before the 121st day after the date of
26 the notice, a written request for the return of the firearm.

27 (h) The proceeds from the sale of a firearm under this

1 article shall be paid to the owner of the seized firearm, less the
2 cost of administering this article with respect to the firearm.

3 SECTION 3. Subchapter D, Chapter 411, Government Code, is
4 amended by adding Section 411.0522 to read as follows:

5 Sec. 411.0522. INFORMATION CONCERNING LETHAL VIOLENCE
6 PROTECTIVE ORDER. (a) The department by rule shall establish a
7 procedure to provide information concerning a person who is the
8 subject of a lethal violence protective order to the Federal Bureau
9 of Investigation for inclusion in the National Instant Criminal
10 Background Check System.

11 (b) The procedure must require the department to provide any
12 information received under Article 7B.158, Code of Criminal
13 Procedure, to the Federal Bureau of Investigation not later than
14 the 30th day after the date the department received the
15 information.

16 SECTION 4. Section 411.172(a), Government Code, is amended
17 to read as follows:

18 (a) A person is eligible for a license to carry a handgun if
19 the person:

20 (1) is a legal resident of this state for the six-month
21 period preceding the date of application under this subchapter or
22 is otherwise eligible for a license under Section 411.173(a);

23 (2) is at least 21 years of age;

24 (3) has not been convicted of a felony;

25 (4) is not charged with the commission of a Class A or
26 Class B misdemeanor or equivalent offense, or of an offense under
27 Section 42.01, Penal Code, or equivalent offense, or of a felony

1 under an information or indictment;

2 (5) is not a fugitive from justice for a felony or a
3 Class A or Class B misdemeanor or equivalent offense;

4 (6) is not a chemically dependent person;

5 (7) is not incapable of exercising sound judgment with
6 respect to the proper use and storage of a handgun;

7 (8) has not, in the five years preceding the date of
8 application, been convicted of a Class A or Class B misdemeanor or
9 equivalent offense or of an offense under Section 42.01, Penal
10 Code, or equivalent offense;

11 (9) is fully qualified under applicable federal and
12 state law to purchase a handgun;

13 (10) has not been finally determined to be delinquent
14 in making a child support payment administered or collected by the
15 attorney general;

16 (11) has not been finally determined to be delinquent
17 in the payment of a tax or other money collected by the comptroller,
18 the tax collector of a political subdivision of the state, or any
19 agency or subdivision of the state;

20 (12) is not currently:

21 (A) restricted under a court protective order,
22 including a lethal violence protective order issued under
23 Subchapter D, Chapter 7B, Code of Criminal Procedure; or

24 (B) subject to a restraining order affecting the
25 spousal relationship, other than a restraining order solely
26 affecting property interests;

27 (13) has not, in the 10 years preceding the date of

1 application, been adjudicated as having engaged in delinquent
2 conduct violating a penal law of the grade of felony; and

3 (14) has not made any material misrepresentation, or
4 failed to disclose any material fact, in an application submitted
5 pursuant to Section 411.174.

6 SECTION 5. Sections 411.187(a) and (c), Government Code,
7 are amended to read as follows:

8 (a) The department shall suspend a license under this
9 section if the license holder:

10 (1) is charged with the commission of a Class A or
11 Class B misdemeanor or equivalent offense, or of an offense under
12 Section 42.01, Penal Code, or equivalent offense, or of a felony
13 under an information or indictment;

14 (2) fails to notify the department of a change of
15 address, name, or status as required by Section 411.181;

16 (3) commits an act of family violence and is the
17 subject of an active protective order rendered under Title 4,
18 Family Code; ~~or~~

19 (4) is arrested for an offense involving family
20 violence or an offense under Section 42.072, Penal Code, and is the
21 subject of an order for emergency protection issued under Article
22 17.292, Code of Criminal Procedure; or

23 (5) is the subject of an active protective order
24 issued under Subchapter D, Chapter 7B, Code of Criminal Procedure.

25 (c) The department shall suspend a license under this
26 section:

27 (1) for 30 days, if the person's license is subject to

1 suspension for a reason listed in Subsection (a)(2) [~~, (3), or (4),~~
2 ~~except as provided by Subdivision (2)~~];

3 (2) [~~for not less than one year and not more than three~~
4 ~~years, if the person's license:~~

5 [~~(A) is subject to suspension for a reason listed~~
6 ~~in Subsection (a), other than the reason listed in Subsection~~
7 ~~(a)(1); and~~

8 [~~(B) has been previously suspended for the same~~
9 ~~reason;~~

10 [~~(3)~~] until dismissal of the charges, if the person's
11 license is subject to suspension for the reason listed in
12 Subsection (a)(1); or

13 (3) [~~(4)~~] for the duration of or the period specified
14 by:

15 (A) the protective order issued under Title 4,
16 Family Code, if the person's license is subject to suspension for
17 the reason listed in Subsection (a)(3) [~~(a)(5)~~]; [~~or~~]

18 (B) the order for emergency protection issued
19 under Article 17.292, Code of Criminal Procedure, if the person's
20 license is subject to suspension for the reason listed in
21 Subsection (a)(4); or

22 (C) the lethal violence protective order issued
23 under Subchapter D, Chapter 7B, Code of Criminal Procedure, if the
24 person's license is subject to suspension for the reason listed in
25 Subsection (a)(5) [(a)(6)].

26 SECTION 6. Chapter 37, Penal Code, is amended by adding
27 Section 37.083 to read as follows:

1 Sec. 37.083. FALSE REPORT REGARDING REQUEST FOR LETHAL
2 VIOLENCE PROTECTIVE ORDER. (a) In this section, "prosecuting
3 attorney" means a district attorney, criminal district attorney, or
4 county attorney.

5 (b) A person commits an offense if, with intent to deceive,
6 the person knowingly makes to a prosecuting attorney or peace
7 officer a false statement relating to a request that a prosecuting
8 attorney file an application for a lethal violence protective order
9 under Subchapter D, Chapter 7B, Code of Criminal Procedure.

10 (c) An offense under this section is a Class B misdemeanor.

11 SECTION 7. Section 46.04, Penal Code, is amended by adding
12 Subsection (c-1) and amending Subsection (e) to read as follows:

13 (c-1) A person commits an offense if, after receiving notice
14 that the person is subject to a lethal violence protective order
15 issued under Subchapter D, Chapter 7B, Code of Criminal Procedure,
16 and before expiration of the order, the person purchases, owns,
17 possesses, or controls a firearm in violation of the order.

18 (e) An offense under Subsection (a) is a felony of the third
19 degree. An offense under Subsection (b), ~~(c)~~ (c), or (c-1) is a
20 Class A misdemeanor.

21 SECTION 8. Not later than October 1, 2021, the Department of
22 Public Safety shall adopt rules as required by Section 411.0522,
23 Government Code, as added by this Act.

24 SECTION 9. This Act takes effect September 1, 2021.